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IN THE

Supreme Court of the United States

No. 71-121

PRO-FOOTBALL, INC., NATIONAL FOOTBALL LEAGUE, District of Columbia Armory Board, et al.,

Petitioners,

v.

NORMAN F. HECHT, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENTS' MEMORANDUM IN REPLY

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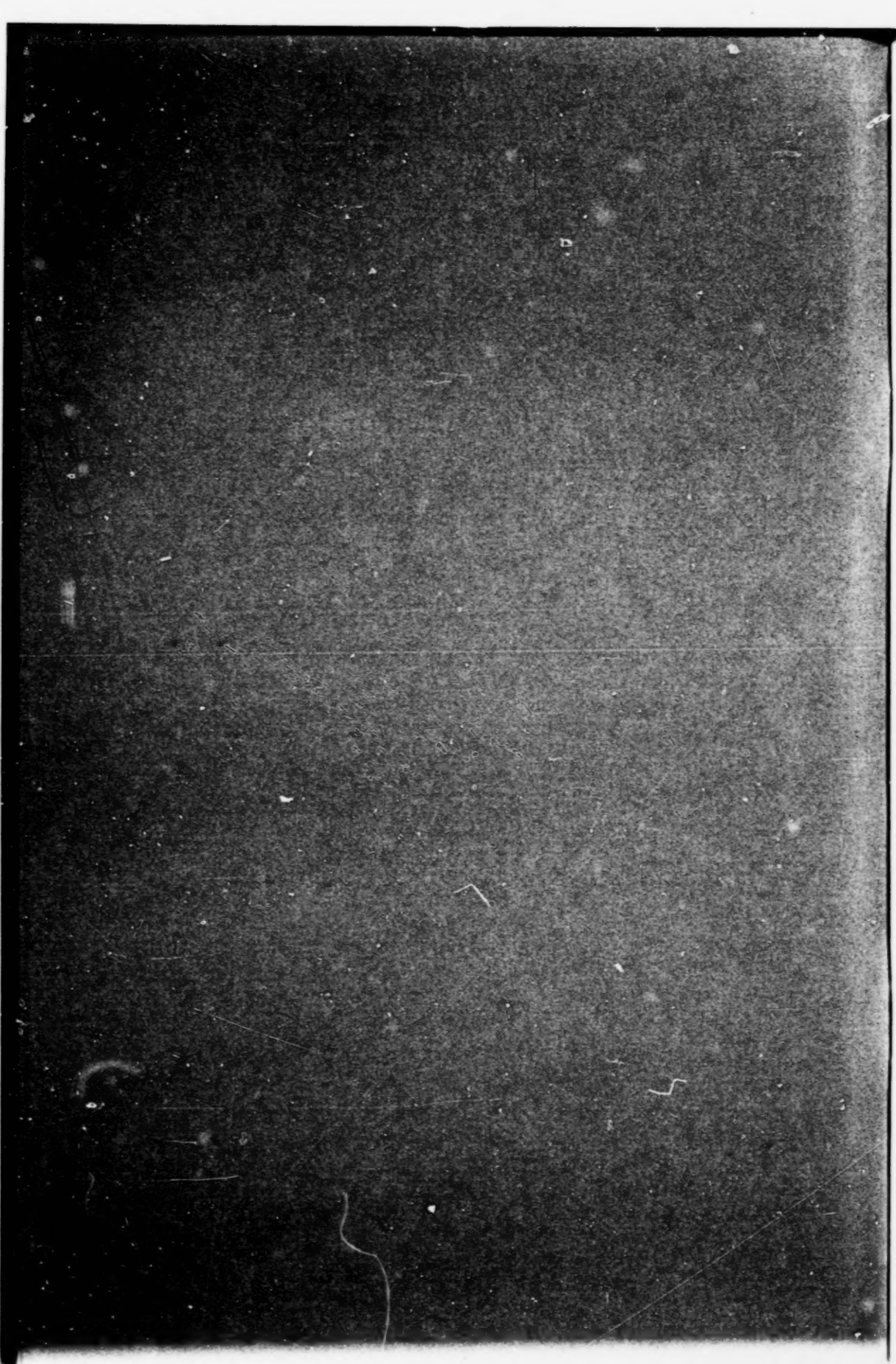

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RESPONDENTS' MEMORANDUM IN REPLY

OPINIONS BELOW

The opinion of the District Court (App. A of Petition pp. 1a-10a) is reported at 312 F. Supp. 472. The opinion of the Court of Appeals for the District of Columbia Circuit (App. B of Petition, pp. 11a-43a) is not yet reported.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether commercial dealings between private parties and government entities, such as the restrictive covenant in the lease agreement between the Redskins and the Armory Board, which prohibits the use of John F. Kennedy Stadium by any other professional football team for 30 years, is immune from the antitrust laws under the valid governmental action doctrine, merely because a government agency is a party to the commercial dealing, or under the provisions of the District of Columbia Stadium Act.

STATUTES INVOLVED

The pertinent provisions of the Sherman Act, Sections 1, 2 and 3 and of the District of Columbia Stadium Act are set forth in the Petition, Appendix D, pp. 45a-48a.

STATEMENT

Respondents are three local businessmen,[1] who in June 1965 had assemble a group of Washington businessmen to purchase an American Football League franchise for the District of Columbia. A written offer to purchase a franchise for $7,500,000.00, contingent upon the group obtaining the use of John F. Kennedy Stadium for the exhibition

[1] Respondents are Norman F. Hecht, who was a branch manager of Public National Bank and is now Vice President of Madison National Bank and director of American Investment Corporation, an investment and real estate management company in the Washington area; Harry Kagen, who is an owner and operator of a large volume downtown liquor store and is active in real estate investments; and Marc Miller, who is engaged in real estate development and investments.

of home games, was forwarded to the Commissioner of the AFL in the form suggested by the Commissioner.

Respondents submitted a letter to the Armory Board offering to lease Kennedy Stadium on those Sundays, Friday and Saturday nights when the Stadium was not being used by the Redskins for the minimum guaranteed rent of $100,000.00 or 12% of the gross receipts, which is the same percentage paid by the Redskins. Respondents were advised that the Armory Board was prohibited from leasing the Stadium to them because of the restrictive covenant in the Redskins lease.

Respondents sought and received the assistance of the Secretary of the Department of Interior in their attempt to obtain the use of the Stadium. The Solicitor of the Department of Interior submitted an opinion to the Armory Board that the restrictive covenant in the Redskins lease was in violation of the antitrust laws. However, the Armory Board continued to adhere to the position that the restrictive covenant prohibited it from leasing the Stadium to another football team without the consent of the Redskins, which consent Respondents were unable to obtain. Kennedy Stadium is the only stadium in the District of Columbia suitable and available for the exhibition of professional football games.

The Armory Board operates the Stadium as would a private landlord. It was the intent of Congress as stated by Senator Bible, Chairman of the District of Columbia Committee, that the operation of the Stadium by the Armory Board was "to be in the nature of a private venture."[2] The Stadium Act reflects this intent by conferring on the Armory Board broad authority to act on behalf of the government as the landlord of Kennedy Stadium.

The Redskins engaged in arms-length negotiations with the Armory Board for approximately one and a half years before the Redskins finally signed the lease agreement dated

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[2] 103 Cong. Rec. 13567.

December 24, 1959.[3] In a memorandum to the Armory Board, the late Chester Gray, Corporation Council of the District of Columbia, advised that the late George P. Marshall, President of the Redskins, was demanding, as a condition of the lease, that the Stadium would not be leased to any other professional football team.[4] Thus, the Redskins obtained the inclusion of the restrictive covenant in the lease, paragraph II(e), which prohibits the use of the Stadium by any other professional football team, during the 30-year term, for the years 1961 through 1990, that includes the seven Sundays, fourteen Friday and fourteen Saturday nights and Thanksgiving Day, during the football season, when the Stadium is not used by the Redskins.

The language of paragraph II(e) of the lease provides as follows:

> "The Lessor shall have the right to lease or otherwise permit the use and occupancy of the Stadium during any period exclusive of such specific dates referred to herein for any purpose or purposes, (except provided in subsection (a) of this Paragraph II), including (but not limited to) school, college or other amateur or professional baseball, football and basketball games and, also, for such other use or purpose as a Lessor may determine, *provided that at no time during the term of this Lease Agreement shall the Stadium be let or rented to any professional football team other than the Washington Redskins.*"

Respondents filed their original complaint on October 21, 1966 and the second amended complaint was filed March 24,

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[3]Minutes of meetings of the Armory Board indicate negotiations were carried on between the Armory Board and representatives of the Redskins during thirteen meetings commencing on July 22, 1958 and ending December 22, 1959. Armory Board's Answer To Interrogatories, No. 3(b) filed 8/15/67.

[4]Armory Board admitted authenticity of Memorandum dated 4 May 1959 of Chester H. Gray, Corporation Council, deceased, Exhibit D to Plaintiffs' Request for Admission of Authenticity of Documents filed 8/25/67, in Stipulation of Armory Board filed 10/13/67.

1967. Respondents allege in Court I of the second amended complaint that the restrictive covenant in the Redskins lease on Kennedy Stadium constitutes a contract in restraint of trade in violation of Sections 1 and 3 of the Sherman Act, because the restrictive covenant foreclosed the Respondents from the use of a stadium facility essential to the operation of a professional football team in the District of Columbia, which prevented Respondents from obtaining an American Football League franchise and a Continental Football League franchise for the District of Columbia. In Count II, Respondents allege that the Redskins have furthered and effectuated their monopoly over professional football in the District of Columbia, in violation of Sections 2 and 3 of the Sherman Act, by obtaining the restrictive covenant and not waiving it and consenting to the use of Kennedy Stadium by the Respondents when the Redskins were not using it. In Count III, Respondents allege that the restrictive covenant has furthered and effectuated the conspiracy of the Redskins and National Football League to restrain and monopolize the business of professional football in the District of Columbia. Respondents seek treble damages and injunctive relief against the Redskins and National Football League and injunctive relief only against the Armory Board.

On May 7, 1968, the late Judge Alexander Holzoff denied cross-motions for summary judgment of Petitioners and Respondents on Counts I, II and III on the grounds that there were too many issues of fact to be determined and the case should be tried.[5] The Redskins and National Football League, joined by the Armory Board, and the Respondents renewed their cross-motions for summary judgment on January 15, 1970. The District Court granted Petitioners' motion for summary judgment, holding that the leasing of the Stadium by the Armory Board was valid governmental action and therefore was immune from the

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[5]Transcript of proceedings of May 7, 1968, pp. 65, 66, filed 7/13/70.

antitrust laws.[6] The Court of Appeals reversed and remanded the case to the District Court for trial on the merits, reasoning that the leasing of Kennedy Stadium by the Armory Board to the Redskins is not the kind of government action that is immune from the antitrust laws, and that Congress did not specifically exempt, nor was their any evidence that Congress intended to exempt, the actions of the Armory Board from the antitrust laws.

REASONS FOR NOT GRANTING THE WRIT

The reasons for not granting the writ of certiorari are: (A) the decision below is clearly correct; (b) the judgment of the Court of Appeals remanding the case for trial on the merits is interlocutory; (c) the decision below does not conflict with decisions of the Supreme Court; (D) the decision below does not conflict with other lower court decisions; (E) a prior petition for writ of certiorari was denied in a similar case; (F) the constitutional right to petition government officials involved in *California Motor Transport Co. v. Trucking Unlimited*, in which certiorari was granted (No. 70-92, O.T. 1971) is not involved in the instant case, and (G) there is no evidence of Congressional intent to exempt Armory Board activities from the antitrust laws.

A. THE DECISION BELOW IS CLEARLY CORRECT

After a thorough study of the decisions of the Supreme Court and pertinent lower court decisions, examination of the D.C. Stadium Act, legislative history and administrative practice, and a comparison of the Stadium Act with other

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[6]The District Court, in emphasizing the desirability of the Armory Board entering into a long term lease with the Redskins, failed to consider or deal with the fact that the restrictive covenant is not in the best interest of the public, that its effects are contrary to the purpose of the Stadium Act, and that it does not protect or promote the interests of the Armory Board (see footnote 10), or whether it was the kind of government activity that is immune from the antitrust laws.

federal statutes referring or not referring to antitrust applicability, the Court of Appeals held that the leasing of Kennedy Stadium to the Redskins by the Armory Board is not the kind of government action that is immune from Sections 1, 2 and 3 of the Sherman Act and that the 30-year restrictive covenant must stand the scrutiny of the antitrust laws. This decision of the Court of Appeals is consistent with the general reluctance of the Supreme Court to grant antitrust immunity because of the "indispensable role of antitrust policy in the maintenance of a free economy,"[7] and its repeated admonition that "immunity from the antitrust law 'is not lightly implied'."[8]

Government agencies, when grouped together, are the largest participant in our economy. If immunity from the antitrust laws is extended to the commercial activities and contracts between private parties and government agencies, merely because a government agency is a party to the commercial dealing, a very significant portion of our economy and a large number of its participants will be excluded from the protection of the antitrust laws. Such an exclusion would obstruct the goal of the antitrust laws to achieve a free and unfettered economy.

Application of the antitrust laws to commercial dealings between private parties and government agencies, not specifically exempt by statute, will not hinder the operation of government as the Petitioners argue. All levels of government, federal and state, have confirmed their commitment to promoting competition in commercial dealings by adopting and enforcing competitive bidding laws and regulations.[9]

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[7] *United States v. Philadelphia National Bank*, 374 U.S. 321, 348 (1963); see also *Northern Pacific Ry. Co. v. United States*, 356 U.S. 1, 4 (1958).

[8] *United States v. First City Nat. Bank*, 386 U.S. 351, 368 (1967), quoting from *California v. F.P.C.*, 369 U.S. 482, 485 (1962).

[9] See 41 U.S.C. §5; Federal Procurement Regulations generally; and D.C. Stadium Act, D.C. Code §2-1723(3).

The restrictive covenant is not required to protect either the interests of the Armory Board or the public, in fact, it is contrary to such interests.[10] Denial of immunity to the restrictive covenant in the Redskins lease will not infringe upon the application of the immunity of the valid governmental action doctrine to actions of government officials acting pursuant to federal or state government regulation of specific industries in the public interest,[11] nor will it infringe upon the application of immunity to the constitutional right of any party to petition government officials to influence the passage or enforcement of laws and regulations.[12] No provision in the Stadium Act specifically exempts, nor is there any evidence of Congressional intent to exempt the actions of the Armory Board from the antitrust laws. Thus the decision of the Court of Appeals, that is consistent with antitrust policy and economically sound, should stand.[13]

B. INTERLOCUTORY JUDGMENT

This case is not yet ripe for review by the Supreme Court because the judgment of the Court of Appeals remanded the case to the District Court for trial on the merits.[14]

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[10]The restrictive covenant limits the variety of teams the public can see perform and the number of games the public has the opportunity to attend. It prevents the maximum use of the Stadium and prevents the Armory Board from obtaining rent from a second team that would decrease the amount of money the Armory Board would need to borrow from the United States Treasury to pay the annual interest on the Stadium construction bonds.

[11]*Parker v. Brown*, 317 U.S. 341 (1943).

[12]*Eastern R. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965).

[13]Note, Governmental Action and Antitrust Immunity, 119 U. Pa. L. Rev. 521 (1971).

[14]See Petition for Certiorari, App. C, p. 44a.

Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co., 389 U.S. 327 (1967). It has been the long standing practice of the Supreme Court not to issue a writ of certiorari to review an interlocutory judgment of a Circuit Court of Appeals, unless it was necessary to prevent extraordinary inconvenience or unless delay would as a practical matter defeat the right to any review at all.[15] Neither factor is present in this case.

In addition to the governmental action issue, the Petitioners and Respondents in their motions for summary judgment, raised several other legal issues concerning the theory and application of the antitrust laws, which have not yet been decided.[16] Thus, in the event Respondents were to prevail on this appeal and at trial, it is highly probable that this case will be before this Court again on a petition for certiorari. Cases should not be sent up for review in fragments in order to achieve effective judicial administration, to conserve judicial time and energy in this era of over crowded dockets and to eliminate delay, expense and harassment caused by interlocutory appeals.

C. NO CONFLICT BETWEEN DECISION BELOW AND DECISIONS OF THE SUPREME COURT

Petitioners assert that the decision of the Court of Appeals in the instant case is contrary to the decisions of the Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943), *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*,

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[15] *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251, 258 (1916); *Cobbledick v. United States*, 309 U.S. 323, 324 (1940); *Slaker v. O'Conner*, 278 U.S. 188, 189 (1929).

[16] Motions for summary judgment filed by Petitioners and Respondents January 15, 1968 and November 20, 1967, respectively, raise the issues whether the 30 year restrictive covenant is a *per se* violation of Sections 1 and 3 of the Sherman Act and whether the Respondents had the requisite "business" or "property" that comes within the protection of the antitrust laws.

365 U.S. 127 (1961), and *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). A careful reading of the opinions clearly reveals there is no conflict. Commercial dealings between private parties and government agencies, such as the leasing of Kennedy Stadium by the Armory Board to the Redskins, are not the kind of government action the Supreme Court has held to be immune from the antitrust laws.

1. *Parker* Exemption Not Applicable

In *Parker*, the Court was concerned with a suit brought by a packer of raisins to enjoin the operation of an agricultural marketing scheme based on an act passed by the California legislature authorizing state officials to establish programs for the marketing of agricultural commodities so as to restrict competition among growers and to maintain prices. The Court held that the State of California had the right to exercise its sovereign power to regulate an industry by reducing competition when it was for the public benefit and in the best interest of the industry. The Supreme Court exempted from the antitrust laws actions taken by state government officials to regulate the raisin industry pursuant to a mandate from the California legislature.

In the present case, the restrictive covenant in the Redskins lease is not the product of a government agency taking restrictive action to regulate an industry pursuant to a legislative mandate to restrain competition in the public interest. It is the product of arms-length negotiations for the use of a municipal stadium for a private commercial purpose between a private party and a government agency acting as the landlord. Thus, the decision of the Court of Appeals not to exempt the restrictive covenant from the antitrust laws, merely because the Armory Board is a party to the lease, does not conflict with the exemption granted in *Parker* to restrictive actions taken by government officials to regulate an industry pursuant to legislative authority.

The decision of the Court of Appeals follows the distinction made by the Supreme Court in *Parker* between the participation of a government agency in an agreement with a private party and state regulatory actions. The Supreme Court stated that "we have no question of the state or its municipality becoming a participant in a private agreement or combination by others for restraint of trade,"[17] and then cited *Union Pacific R. Co. v. United States*, 313 U.S. 450 (1941), a case where the Court held that Kansas City had entered into a private agreement with the railroad company for the construction, operation and exclusive use of a railroad terminal in violation of the Elkens Act. Thus, in addition to there being no conflict between *Parker* and the decision of the Court of Appeals, the distinction made by the Supreme Court between commercial activity and state regulatory action was followed.

2. *Noerr-Pennington* Exemption Not Applicable

In *Noerr* and *Pennington*, the Supreme Court held that joint efforts of private parties to petition government officials in policy making positions to influence the passage or enforcement of a law or regulation or to persuade government officials to take certain action, are immune from the antitrust laws. These cases stand for the proposition that regulation of competition by the political process is legitimate and not proscribed by the Sherman Act, and that the first amendment right of the people to inform government officials of their desires with respect to the passage and enforcement of laws and regulations is paramount in our democratic form of government. As interpreted by the First Circuit Court of Appeals,[18] the thrust of *Noerr* and *Pennington* is aimed at insuring free access to public officials vested with significant policy making discretion. Neither

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[17] 317 U.S. at 352.

[18] *George R. Whitten, Jr. Inc. v. Paddock Pool Builders, Inc.*, 424 F.2d 25 (1st Cir. 1970), *cert. denied*, 400 U.S. 850 (1970).

in *Noerr* or *Pennington* did the Court extend the immunity to public officials engaged in purely commercial dealings similar to the facts in the present case. Thus, the decision of the Court of Appeals in this case, denying immunity to the commercial dealings between the Armory Board and Redskins in leasing Kennedy Stadium does not conflict with the *Noerr-Pennington* grant of immunity to political action.

D. NO CONFLICT WITH LOWER COURT DECISIONS

There is no conflict between the decision below and the decision of the Court of Appeals for the First Circuit in *E.W. Wiggins Airways, Inc. v. Massachusetts Port Authority*, 362 F.2d 52 (1st Cir. 1966), *cert. denied*, 385 U.S. 947 (1966) nor the decision of the Ninth Circuit in *Sun Valley Disposal Co. v. Silver State Disposal Co.*, 420 F.2d 341 (9th Cir. 1969), as the Petitioners contend. In *Wiggins*, the Court found that the Port Authority had been authorized to manage and operate the public airport by the Massachusetts legislature and in *Sun Valley Disposal* the state legislature directed the County Commission to provide trash and garbage disposal services. Instead of the Port Authority monopolizing the fixed base services and the County Commission monopolizing the trash and garbage disposal services, by purchasing equipment and hiring employees to perform the services, they each chose to contract with one private company, to act on their behalf to furnish the services their legislatures authorized and directed them to perform. The effect was that the private companies became the agents of the Port Authority and County Commission to perform the valid government services. The exclusive contracts did not create any additional restraint on trade beyond the monopolies the respective legislatures gave the Port Authority over the operation and management of the airport and the County Commission over the trash and garbage disposal service.

The thrust of *Wiggins* and *Sun Valley Disposal* is that exclusive contracts between a government agency and a private party for the performance of a service that the government entity itself has been given exclusive authority to perform by its legislature is valid governmental action immune from the antitrust laws. For example, in the present case, a part of managing a stadium is the operation of concession stands to provide food services for spectators. According to *Wiggins*, the Armory Board may either purchase the equipment and hire employees to provide the food services itself or contract with one company to provide the services, which is comparable to the Port Authority contracting with one company to provide fixed base operations to serve the airlines and passengers.

In neither *Wiggins* nor the present case did the legislatures grant either the Port Authority or the Armory Board the exclusive use of the airport for the operation of an airlines company or the exclusive use of the stadium to operate a football team. The First Circuit in *Wiggins* would have been faced with the identical fact situation that is before the Court in the present case if the Port Authority had entered into a lease with an airline company that prohibited the use of the airport by any other airlines and created a monopoly over air transportation in the Boston area. In a later case, *George R. Whitten, Jr., Inc. v. Paddock Pool Builders, Inc.*, 424 F.2d 25 (1st Cir. 1970), *cert. denied*, 400 U.S. 850 (1970), the First Circuit indicated it would not have granted immunity from the antitrust laws to an exclusive lease between the Port Authority and an airlines company, when it dispelled the misconceived notion of total immunity for commercial dealings with government entities and adopted the view that commercial dealings between private parties and government entities are not immune from the antitrust laws merely because a government entity is a party.

The Armory Board in leasing the stadium to the Redskins for the exhibition of professional football games, was not

contracting with a private party to perform a service it was authorized by Congress to perform or contracting for the performance of a service that is part of managing and operating a stadium. Congress did not authorize the Armory Board to operate a football team or to use the stadium itself for the exhibition of sports events. Thus, the decision of the Court of Appeals in the instant case does not conflict with the decisions in *Wiggins* and *Sun Valley Disposal* and is consistent with the *Paddock* case.

E. PETITION FOR WRIT OF CERTIORARI DENIED IN SIMILAR CASE

The Supreme Court denied a petition for writ of certiorari to review the decision of the First Circuit Court of Appeals in *Paddock Pool Builders, Inc. v. George R. Whitten,* 400 U.S. 850 (1970), which decision was similar to the decision of the Court of Appeals in this case. In essence, the First Circuit held that actions of private parties and government agencies are not immune from the antitrust law when government agencies and private parties are engaged in commercial dealings, merely because a government agency is a party to the commercial activity. The First Circuit interpreted *Parker, Noerr* and *Pennington* as granting immunity only to government regulatory action and joint efforts to petition public officials in policy making positions to obtain the passage and enforcement of laws and regulations.

In *Paddock*, the Petitioner urged the Supreme Court to review the case because it contended that Parker established the broad general rule that valid government action in any context could not form the basis of private claims under the antitrust laws. In addition, the Respondent waived its right to file a brief in opposition to the petition and urged the Court to review the case because the application of the valid governmental action doctrine to government actions in commercial dealings was of major public importance. Yet, the Court denied certiorari.

If *Paddock* was not deserving of the Court's consideration, the present case is surely less deserving. In the instant case, the Court of Appeals not only interpreted the exemptions granted in *Parker, Noerr* and *Pennington* as did the First Circuit, but it also found that the provisions of the D.C. Stadium Act do not exempt from the antitrust laws the actions of the Armory Board in managing and operating the stadium.

F. WRIT OF CERTIORARI SHOULD NOT BE GRANTED FOR CONSIDERATION OF THIS CASE WITH *CALIFORNIA MOTOR TRANSPORT CO. v. TRUCKING UNLIMITED.*

The Court has accepted for review the Ninth Circuit decision in *California Motor Transport Co. v. Trucking Unlimited, cert. granted,* June 1, 1970 (No. 70-92, O.T. 1971). In this case a group of trucking companies conspired to conduct a program of opposing applications by competitors for operating rights before the state and federal commissions and the courts. The Ninth Circuit held that (1) the *Noerr-Pennington* immunity does not apply to concerted employment of judicial and administrative adjudicative processes as part of a scheme to restrain trade, and (2) that if the *Noerr-Pennington* immunity applies to judicial and administrative adjudicative processes, relief is not barred under the "sham" exception suggested in *Noerr,* if the real purpose of the judicial activity was to restrain competitors directly, rather than to restrain them indirectly by inducing restrictive government action. The primary issue presented for review by *Trucking Unlimited* is, whether the *Noerr-Pennington* immunity extends to judicial and administrative adjudicative processes, which involve the constitutional right to petition government officials provided for in the First Amendment. This constitutional issue is not involved with the question of whether commercial dealings between private parties and government agencies should be immune from the antitrust laws. Application of the antitrust laws to commercial deal-

ings of government agencies does not merit consideration with constitutional issues. The fact that the Court has decided to review the constitutional issues in *Trucking Unlimited* should have no bearing on the action taken by the Court on the present petition for certiorari.

The Fifth Circuit case, *Woods Exploration & Producing Co. v. Aluminum Co. of America*, 438 F.2d 1286 (5th Cir. 1971) is pending in the Supreme Court on a petition for certiorari, No. 70-173. In this case the Fifth Circuit limited the *Noerr-Pennington* rule by making its applicability hinge on the truth or falsity, accuracy or inaccuracy of representations made to government agencies to induce government action. Here again the interpretation of the *Noerr-Pennington* rule is at issue which involves the constitutional right to petition. Thus, the action taken by the Court on the pending petition for certiorari in *Woods Exploration* should not effect the Court's disposition of the petition for certiorari in this case.

G. NO EVIDENCE OF CONGRESSIONAL INTENT TO EXEMPT ARMORY BOARD ACTIVITIES FROM ANTITRUST LAWS.

The D.C. Stadium Act, although passed by the United States Congress, is a local statute and the language in question, "without regard to any other law,"[19] has not been found in any other federal statute. The interpretation of this local statute, and specifically the interpretation of language which will have no bearing on other federal statutes or national policy, does not merit review by the Supreme Court.

In considering the provisions of the Stadium Act and its legislative history, the Court of Appeals found no Congressional intent to exempt the activities of the Armory Board

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[19] 2 D.C. Code Sec. 2-1723. See text in Petition, App. D, pp. 47a-48a.

from the antitrust laws. To the contrary, it found several factors that indicated Congress did not intend to exempt actions of the Armory Board from the Sherman Act.[20]

The interpretation of the Court of Appeals adheres to the expressed policy of the Supreme Court that when there are two Acts upon the same subject, the rule is to give effect to both if possible, and that repeal of the antitrust laws is to be implied only if necessary to make the provisions of the later Act work. *Silver v. New York Stock Exchange,* 373 U.S. 341 (1963); and *California v. F.P.C., supra,* 485; and *United States v. Borden Co.,* 308 U.S. 188, 198 (1939). The most reasonable interpretation of the pertinent language is that the authority of the Armory Board to manage and operate the Stadium is derived solely from the Stadium Act and not from any other laws, and that no other law is to affect the authority of the Armory Board to engage in any lawful acts necessary to construct, manage and operate the stadium, including entering into leases and contracts for lawful purposes under lawful terms and conditions. This interpretation permits the Court to give effect to both the cited language of the Stadium Act and the antitrust laws and to adhere to the policy that immunity from the antitrust laws, absent specific statutory provisions, is not lightly implied. The interpretation of the Court of Appeals should stand.

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[20]Petition, App. B, pp. 38a-41a.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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August 23, 1971